

SETTLEMENT AGREEMENT

THIS AGREEMENT is made by and between CARL DUKES (hereinafter "Plaintiff"), and THE CITY OF ALBANY, MICHAEL SBUTTONI, ANTHONY RYAN, PETER MCKENNA, KEVIN BREEN, PHILLIPPA P. GARLAND-WILCOX, as Administrator of the Estate of Kenneth Wilcox, and RONALD MATOS, (hereinafter "Defendants").

WHEREAS, Plaintiff has commenced an action in the United States District Court, Northern District of New York, against and THE CITY OF ALBANY, MICHAEL SBUTTONI, ANTHONY RYAN, PETER MCKENNA, KEVIN BREEN, PHILLIPPA P. GARLAND-WILCOX, as Administrator of the Estate of Kenneth Wilcox, and RONALD MATOS.

WHEREAS, Plaintiff has agreed prior to the execution of this Agreement to discontinue his individual actions against MICHAEL SBUTTONI, ANTHONY RYAN, PETER MCKENNA, KEVIN BREEN, PHILLIPPA P. GARLAND-WILCOX, as Administrator of the Estate of Kenneth Wilcox, and RONALD MATOS, with prejudice; and

WHEREAS, Plaintiff and THE CITY OF ALBANY wish to resolve their differences without any resolution of the claims in order to avoid the expense and uncertainty of a trial; and

WHEREAS all parties to this action desire to settle the claims set forth herein in accordance with the terms set forth below, and

WHEREAS the City of Albany, which is defending and indemnifying the individual defendants herein, in recognition of its current financial condition, including potential budgetary limitations, requires that the settlement of the claim herein be paid out over a five-year period and may need to finance settlement of the claim herein, in whole or in part, by use of municipal bonds, which, if necessary, shall be structured and offered pursuant to applicable law; and

WHEREAS the City of Albany wishes to compromise the claims herein, in view of its potential exposure, in the event plaintiff were to prevail at trial, including on plaintiff's alleged damages for past and future pain and suffering; loss of plaintiff's liberty, including during the periods of time encompassed by pretrial detention; plaintiff's statutory claims for attorneys' fees, pursuant to federal law; the disbursements by plaintiff's counsel herein; and the assessment of punitive damages against the individual defendants; and

WHEREAS the within settlement and compromise of the claims herein is not intended to be an admission or acknowledgement of liability on behalf of the defendants named in the civil actions;

WHEREAS plaintiff, in view of the City of Albany's financial limitations, and potential claim of insolvency in the event of a verdict, wishes to compromise his claims against defendants prior to trial,

NOW, THEREFORE, it is agreed as follows:

(1) The action entitled *Carl Dukes v. City of Albany, et al.*, Docket No.:17-cv-865, pending in the United States District Court for the Northern District of New York, is hereby fully and finally settled for the sum of \$5,750,000.00, inclusive of attorneys' fees, disbursements, and any claims for punitive damages.

(2) The settlement sums shall be paid out in accordance with the following schedule:

11/1/21: \$2,000,000.00
11/1/22: \$937,500.00
11/1/23: \$937,500.00
11/1/24: \$937,500.00
11/1/25: \$937,500.00

Total: \$5,750,000.00

- (3) For each installment payment set forth above, the settlement sum shall be transmitted to plaintiff's counsel on or prior to the due date. Plaintiff's counsel then shall be responsible for the disbursement of such monies from the installment payment as are allocable to the plaintiff. The checks shall be made payable to "Carl Dukes and Kelner & Kelner, Esqs."
- (4) Plaintiff shall separately execute a General Release, the terms of which are to be agreed upon by counsel, as to all defendants and will provide Stipulations of Discontinuance, consistent with the terms set forth herein. The aforesaid General Release and Stipulation of Discontinuance shall be provided to defense counsel no later than October 11, 2021. In the event such documents are provided to defense counsel after October 11, 2021, defendants shall be obligated to make their first payment within sixty (60) days from the date on which said documents are received. The remainder of the schedule shall be unaffected.
- (5) This stipulation may be signed in counterparts.

AND IT IS FURTHER STIPULATED AND AGREED AS FOLLOWS:

1. Plaintiff will discontinue all of the claims made against THE CITY OF ALBANY, MICHAEL SBUTTONI, ANTHONY RYAN, PETER MCKENNA, KEVIN BREEN, PHILLIPPA P. GARLAND-WILCOX, as Administrator of the Estate of Kenneth Wilcox, and RONALD MATOS, and will discontinue the presently pending action in the United States District Court Northern District of New York *Carl Dukes v. City of Albany, et al.*, Docket No.:17-cv-865 with prejudice. (A copy of the Stipulation is attached hereto as Exhibit A.)

2. Plaintiff shall provide to Defendants a General Release with respect to any and all claims asserted in the instant action and any and all other claims relating to the incidents described

in the Complaint. (A copy of the form of the General Release to be provided is attached hereto as Exhibit B.)

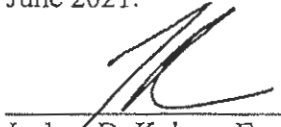
3. There shall be no admission of liability on the part of the Defendants with regard to any of the claims asserted by Plaintiff. All claims, past, present or future, are disputed and this full and final settlement thereof shall never be treated as evidence of liability, nor as an admission of liability or responsibility at any time or in any manner whatsoever by the parties hereto. It is further stipulated and agreed that neither the parties nor their counsel will publicly reveal the details of settlement negotiations held prior to the settlement, except to the limited extent necessary for the pending related action(s) in the Court of Claims.

4. This Agreement shall be construed under the laws of the State of New York.

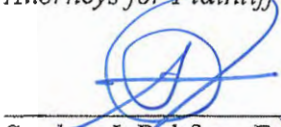
5. This Agreement represents the entire agreement of the parties and shall not be amended, modified, or supplemented without a writing signed by the parties.

6. This Agreement shall be signed in counterparts and shall be interpreted and deemed to be one Agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals the _____ day of June 2021.

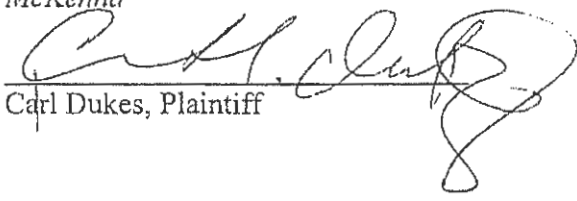


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Carl Dukes, Plaintiff

IT IS SO ORDERED:



David N. Hurd
U.S. District Judge

Dated: October 7, 2021

So Ordered:

Honorable David N. Hurd
United States District Judge